

AMENDED IN ASSEMBLY MAY 3, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2524**

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**Introduced by Assembly Member DeVore**

February 23, 2006

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An act to amend Section ~~5307.1~~ 5307.2 of, and to add Section 4608.1 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2524, as amended, DeVore. Workers' compensation: ~~pharmacy services and drugs~~; *access to health care*.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law requires the administrative director to adopt and revise periodically a medical fee schedule for specified services, drugs, fees, and goods, other than physician services. Existing law provides that except for pharmacy services and drugs that are not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100% of fees prescribed in the relevant Medi-Cal payment system.

This bill would prescribe the fee schedule to be used for reimbursement of prescription drugs dispensed on and after January 1, 2007, and would authorize the administrative director, on and after January 1, 2008, to revise this fee schedule for prescription drugs on a biennial basis, as specified.

This bill would also provide that the provisions of the workers' compensation law shall not be construed to prohibit a pharmacy,

~~health care provider, insurance company, or self-insured entity from utilizing or contracting with an agent or assignee for the purposes of claims processing, assignment of claims, processing and receiving payments, or filing required reports on behalf of the pharmacy, health care provider, insurance company, or self-insured entity. It would also make various technical, nonsubstantive changes.~~

*Existing law requires the administrative director to contract with an independent consulting firm, to the extent permitted by law, to perform an annual study of access to medical treatment for injured workers, and to make recommendations to the administrative director, to ensure continued access to health care and products for injured workers.*

*This bill would expand the scope of this study to include how reimbursement policies and rates may affect the health care delivery system that treats injured workers, and would require that the first study be completed by no later than July 1, 2007.*

*Existing law permits the administrative director to make appropriate adjustments to the official medical fee schedule, if he or she determines, based on the above study, that there is insufficient access to health care or products for injured workers. Existing law also permits the administrative director, in accordance with certain requirements, to adopt fees in excess of 120% of the applicable Medicare payment system fee for applicable services or products, when he or she determines that a substantial access problem exists.*

*This bill would authorize the administrative director to make appropriate adjustments to both the medical fee schedule, and the pharmacy fee schedule, if he or she determines based on the above study that there is insufficient access to health care or products for injured workers. This bill would also authorize the administrative director to adopt fees in excess of 120% of the applicable Medicare payment system fee for applicable services or products, including pharmacy fees, in accordance with certain requirements, when he or she determines that a substantial access problem exists.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4608.1 is added to the Labor Code, to  
2     read:

1 4608.1. Nothing in this division shall be construed to prohibit  
2 a pharmacy, health care provider, insurance company, or self  
3 insured entity from utilizing or contracting with an agent or  
4 assignee for the purposes of claims processing, assignment of  
5 claims, processing and receiving payments, or filing required  
6 reports on behalf of the pharmacy, health care provider,  
7 insurance company, or self-insured entity.

8 *SEC. 2. Section 5307.2 of the Labor Code is amended to*  
9 *read:*

10 5307.2. The administrative director shall contract with an  
11 independent consulting firm, to the extent permitted by state law,  
12 to perform an annual study of access to medical treatment for  
13 injured workers, *including how reimbursement policies and rates*  
14 *may affect the health care delivery system that treats injured*  
15 *workers. The first study shall be completed and reported to the*  
16 *administrative director by no later than July 1, 2007.* The study  
17 shall analyze whether there is adequate access to quality health  
18 care and products for injured workers and make  
19 recommendations to ensure continued access. If the  
20 administrative director determines, based on this study, that there  
21 is insufficient access to quality health care or products for injured  
22 workers, the administrative director may make appropriate  
23 adjustments to medical ~~and facilities~~<sup>2</sup>, *facility, and pharmacy*  
24 *fees.* When there has been a determination that substantial access  
25 problems exist, the administrative director may, in accordance  
26 with the notification and hearing requirements of Section 5307.1,  
27 adopt fees in excess of 120 percent of the applicable Medicare  
28 payment system fee for the applicable services or products, *and*  
29 *pharmacy fees, as required by Section 5307.1.*

30 ~~SEC. 2. Section 5307.1 of the Labor Code is amended to~~  
31 ~~read:~~

32 ~~5307.1. (a) The administrative director, after public hearings,~~  
33 ~~shall adopt and revise periodically an official medical fee~~  
34 ~~schedule that shall establish reasonable maximum fees paid for~~  
35 ~~medical services other than physician services, drugs and~~  
36 ~~pharmacy services, health care facility fees, home health care,~~  
37 ~~and all other treatment, care, services, and goods described in~~  
38 ~~Section 4600 and provided pursuant to this section. Except for~~  
39 ~~physician services and pharmacy services and drugs, all fees~~  
40 ~~shall be in accordance with the fee-related structure and rules of~~

1 the relevant Medicare and Medi-Cal payment systems, provided  
2 that employer liability for medical treatment, including issues of  
3 reasonableness, necessity, frequency, and duration, shall be  
4 determined in accordance with Section 4600. Commencing  
5 January 1, 2004, and continuing until the time the administrative  
6 director has adopted an official medical fee schedule in  
7 accordance with the fee-related structure and rules of the relevant  
8 Medicare payment systems, except for the components listed in  
9 subdivision (j), maximum reasonable fees shall be 120 percent of  
10 the estimated aggregate fees prescribed in the relevant Medicare  
11 payment system for the same class of services before application  
12 of the inflation factors provided in subdivision (g), except that  
13 pharmacy services and drugs dispensed on and after January 1,  
14 2007, shall be subject to the following fee schedule:

15 (1) Prescription drugs dispensed to an injured employee shall  
16 be reimbursed at the lower of the following:

17 (A) The average wholesale price (AWP) determined by  
18 referring to a nationally recognized pharmaceutical  
19 reimbursement system, such as, but not limited to, Redbook and  
20 First Data Bank Services, that is in effect on the day that the  
21 prescription drug is dispensed, less 17 percent, plus a dispensing  
22 fee of seven dollars and twenty-five cents (\$7.25).

23 (B) The negotiated rate between the provider and the payer.

24 (2) Notwithstanding paragraph (1), on and after January 1,  
25 2008, the administrative director, after public hearings, may  
26 revise the fee schedule for prescription drugs on a biennial basis.  
27 The fee schedule shall establish maximum fees to reflect the  
28 most cost-efficient treatments available.

29 (b) In order to comply with the standards specified in  
30 subdivision (f), the administrative director may adopt different  
31 conversion factors, diagnostic related group weights, and other  
32 factors affecting payment amounts from those used in the  
33 Medicare payment system, provided estimated aggregate fees do  
34 not exceed 120 percent of the estimated aggregate fees paid for  
35 the same class of services in the relevant Medicare payment  
36 system.

37 (c) Notwithstanding subdivisions (a) and (d), the maximum  
38 facility fee for services performed in an ambulatory surgical  
39 center, or in a hospital outpatient department, may not exceed

1 120 percent of the fee paid by Medicare for the same services  
2 performed in a hospital outpatient department.

3 (d) ~~If the administrative director determines that a medical~~  
4 ~~treatment, facility use, product, or service is not covered by a~~  
5 ~~Medicare payment system, the administrative director shall~~  
6 ~~establish maximum fees for that item, provided that the~~  
7 ~~maximum fee paid shall not exceed 120 percent of the fees paid~~  
8 ~~by Medicare for services that require comparable resources.~~

9 (e) ~~Prior to the adoption by the administrative director of a~~  
10 ~~medical fee schedule pursuant to this section, for any treatment,~~  
11 ~~facility use, product, or service not covered by a Medicare~~  
12 ~~payment system, including acupuncture services, the maximum~~  
13 ~~reasonable fee paid shall not exceed the fee specified in the~~  
14 ~~official medical fee schedule in effect on December 31, 2003.~~

15 (f) ~~Within the limits provided by this section, the rates or fees~~  
16 ~~established shall be adequate to ensure a reasonable standard of~~  
17 ~~services and care for injured employees.~~

18 (g) (1) (A) ~~Notwithstanding any other provision of law, the~~  
19 ~~official medical fee schedule, excluding pharmacy services and~~  
20 ~~drugs, shall be adjusted to conform to any relevant changes in the~~  
21 ~~Medicare and Medi-Cal payment systems no later than 60 days~~  
22 ~~after the effective date of those changes, provided that both of the~~  
23 ~~following conditions are met:~~

24 (i) ~~The annual inflation adjustment for facility fees for~~  
25 ~~inpatient hospital services provided by acute care hospitals and~~  
26 ~~for hospital outpatient services shall be determined solely by the~~  
27 ~~estimated increase in the hospital market basket for the 12~~  
28 ~~months beginning October 1 of the preceding calendar year.~~

29 (ii) ~~The annual update in the operating standardized amount~~  
30 ~~and capital standard rate for inpatient hospital services provided~~  
31 ~~by hospitals excluded from the Medicare prospective payment~~  
32 ~~system for acute care hospitals and the conversion factor for~~  
33 ~~hospital outpatient services shall be determined solely by the~~  
34 ~~estimated increase in the hospital market basket for excluded~~  
35 ~~hospitals for the 12 months beginning October 1 of the preceding~~  
36 ~~calendar year.~~

37 (B) ~~The update factors contained in clauses (i) and (ii) of~~  
38 ~~subparagraph (A) shall be applied beginning with the first update~~  
39 ~~in the Medicare fee schedule payment amounts after December~~  
40 ~~31, 2003.~~

~~(2) The administrative director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the Division of Workers' Compensation.~~

~~(3) For the purposes of this subdivision, the following definitions apply:~~

~~(A) "Hospital market basket" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.~~

~~(B) "Hospital market basket for excluded hospitals" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.~~

~~(h) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.~~

~~(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.~~

~~(j) The following Medicare payment system components may not become part of the official medical fee schedule until January 1, 2005:~~

~~(1) Inpatient skilled nursing facility care.~~

~~(2) Home health agency services.~~

~~(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.~~

~~(4) Outpatient renal dialysis services.~~

~~(k) Notwithstanding subdivision (a), for the calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but these rates shall~~

1 be reduced by 5 percent. The administrative director may reduce  
2 fees of individual procedures by different amounts, but in no  
3 event shall the administrative director reduce the fee for a  
4 procedure that is currently reimbursed at a rate at or below the  
5 Medicare rate for the same procedure.

6 ~~(f) Notwithstanding subdivision (a), the administrative~~  
7 ~~director, commencing January 1, 2006, shall have the authority,~~  
8 ~~after public hearings, to adopt and revise, no less frequently than~~  
9 ~~biennially, an official medical fee schedule for physician~~  
10 ~~services. If the administrative director fails to adopt an official~~  
11 ~~medical fee schedule for physician services by January 1, 2006,~~  
12 ~~the existing official medical fee schedule rates for physician~~  
13 ~~services shall remain in effect until a new schedule is adopted or~~  
14 ~~the existing schedule is revised.~~